



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**David Olive**, Former President,  
Governing Board of Quest Preparatory  
Academy, State of Nevada,

Request for Opinion No. **16-80C**

\_\_\_\_\_  
Subject. /

**PANEL DETERMINATION**

NRS 281A.440(5); NAC 281A.440; S.B. 84<sup>1</sup>

The Nevada Commission on Ethics (“Commission”) received Third-Party Request for Opinion (“RFO”) No. 16-80C regarding the alleged conduct of David Olive (“Olive” or “Subject”), Former President of the Governing Board (“Board”) of the Quest Preparatory Academy (“Quest”), associated with the performance of his public duties relating to his private interests as the President and board director for a non-profit organization, the Chartered for Excellence Foundation (the “Foundation”).

As the former President of Quest’s Board, the Subject was a public officer as defined in NRS 281A.160. The Commission has jurisdiction over this matter pursuant to NRS 281A.180 because the allegations contained in the RFO relate to the Subject’s conduct as a former public officer. Pursuant to NRS 281A.440, the Commission accepted jurisdiction of the matter and the Executive Director investigated the allegations and issued a Report and Recommendation to this Panel.

**Allegations**

Olive allegedly violated the following provisions of the Ethics in Government Law set forth in NRS Chapter 281A (“Ethics Law”):

- NRS 281A.020(1)** Failing to honor commitment to avoid conflicts; appropriately separating personal and public roles.
- NRS 281A.400(1)** Seeking or accepting any gift, service, favor, employment, or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of public duties.

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<sup>1</sup> References to the provisions of NRS Chapter 281A include all applicable amendments and revisions adopted pursuant to S.B. 84 of the 79<sup>th</sup> Session of the Nevada Legislature (2017), which statutes have yet to be formally codified. For all references to NAC Chapter 281A, please see the Commission’s Temporary Regulation T003-16. The amendatory provisions of S.B. 84 control over any contrary provisions of NAC Chapter 281A.

**NRS 281A.400(2)** Using position to secure or grant unwarranted privileges, preferences, exemptions or advantages for self, any business entity in which there is a significant pecuniary interest, or any person to whom there is a commitment in a private capacity to the interests of that person.

**NRS 281A.400(3)** Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

The Commission's investigation identified issues and facts beyond those presented in the original RFO. Specifically, it was discovered that Olive allegedly failed to disclose conflicts related to his private relationship with the Foundation as a board director during two Quest Board meetings in 2014, in violation of NRS 281A.420(1). However, a notice of additional issues and facts was not issued under the provisions of NAC 281A.415, because the reasonable discovery of this evidence was outside of the statute of limitations period for purposes of this investigation and Panel review given the provisions of NRS 281A.280.

### **Panel Findings**

On August 23, 2017, a Review Panel ("Panel") consisting of Chair Cheryl A. Lau, Esq. and Commissioners Brian Duffrin and Phillip K. O'Neill reviewed the following: 1) RFO No. 16-80C; 2) Subject's Response to the RFO; 3) Investigator's Report; and 4) the Executive Director's Recommendation to the Review Panel and associated exhibits.<sup>2</sup>

Under NAC 281A.435, the Panel unanimously finds and concludes that the facts do not establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.020(1) and NRS 281A.400(1), (2) and (3). However, pursuant to Sections 5 and 12.5 of S.B. 84, the Panel will issue a Confidential Letter of Instruction to Olive regarding the implications under the Ethics Law relating to a public officer's or employee's volunteer service to a nonprofit organization, in connection to public duties, including education on the requirements of NRS 281A.420. Accordingly, no further proceedings will be held with regard to this RFO.

Without limitation, the Panel's review of the record and related investigation did not find just and sufficient cause for the Commission to render an opinion on the following alleged violations:

**NRS 281A.400(1)** - The investigation revealed that Olive did not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity that would tend to improperly influence a reasonable person in his position to depart from his public duties as the President of the Quest Governing Board. Olive did not receive

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<sup>2</sup> All materials provided to the Panel, except the RFO, represent portions of the investigatory file and remain confidential pursuant to NRS 281A.440(8) and (17).

anything of economic value for his service on the board of directors of the Foundation and he did not benefit financially from any of the agreements or sub-leases entered into between Quest and the Foundation.

NRS 281A.400(2) – Olive had a commitment in a private capacity to his family members, the Foundation and Roberson, as a fellow board member of the Foundation. The investigation revealed that Roberson, as the school’s principal/superintendent, was a subordinate of the Governing Board. However, Roberson was not required to obtain direction from the Governing Board on hiring decisions and she independently coordinated with Quest’s human resources director to hire all individuals, including Olive’s family members. Further, the evidence did not establish that Olive asked or influenced Roberson to hire his family members or that his family members received any preferential treatment or were subjected to different hiring standards than other applicants. Excepting conduct outside of the limitation period, which is not before the Commission, Olive did not improperly use his public position to provide an unwarranted salary increase and promotion to Roberson. It appears that Olive’s conduct may have contravened the Governing Board’s protocol regarding approval of employment terms for the school’s principal. However, the evidence established that the Governing Board supported the raise and promotion.

NRS 281A.400(3) - The investigation revealed that Olive did not negotiate or execute any contracts between Quest and a business entity in which he has a significant pecuniary interest because Olive did not have any private financial interest in the Foundation. Although Olive’s execution of the contract/sub-leases between Quest and the Foundation, an entity to which he had a commitment in a private capacity under NRS 281A.065, had the effect of “securing” or “granting” financial advantages or benefits to the Foundation, the evidence did not establish that these advantages were unwarranted.

### **Conclusion**

Although Olive is a public employee, he no longer serves as a public officer for Quest or any other agency or political subdivision. However, the Panel will issue a Confidential Letter of Instruction to Olive regarding the applicability of the Ethics Law to his current public employment and his ongoing duty to avoid conflicts as a public employee.<sup>3</sup> The Panel also takes this opportunity to educate public officers in similar situations on certain aspects of the Ethics Law concerning: (1) the disclosure requirements of NRS 281A.420; and (2) the appearances of impropriety associated with a public officer or employee’s private interests or relationships. In particular, this matter presents a unique opportunity for the Commission to educate public officers who serve as members of governing bodies of charter schools or public employees of such charter schools regarding conflicts of interest, including any affiliations with private education service provider organizations or non-profit entities.

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<sup>3</sup> Olive is a public employee as defined in NRS 281A.150. The Commission has jurisdiction over the conduct of public officers and public employees pursuant to NRS 281A.280.

In addition to private financial interests, the Legislature has deemed certain relationships to implicate conflicts of interest, such as relationships with family members and those with whom a public officer or public employee shares significant and continuous business relationships. NRS 281A.065(3) and (5). In this case, Olive's volunteer service on the board of directors of the Chartered for Excellence Foundation established a commitment in a *private* capacity to the interests of that entity and also to the Foundation's board members. These relationships established conflicts between Olive's private interests related to the Foundation and his public duties for Quest. Accordingly, under the requirements of the Ethics Law, members of charter school governing bodies and the school employees must not engage in public duties that conflict with their private financial interests or private relationships.

The Commission notes that a code of ethics for members and employees of a public charter school's governing body must be included in the bylaws of the school's governing body and must be prepared with guidance from the Nevada Commission on Ethics. NRS 388A.246. Accordingly, the Commission encourages charter school governing boards to contact the Commission's Executive Director for guidance and/or ethics training. Additionally, public officers and public employees are encouraged to seek legal advice from their official attorney or seek an advisory opinion from the Commission regarding matters which implicate the Ethics Law.

The following Commissioners participated in this Panel Determination:

Dated this 30<sup>th</sup> day of August, 2017.

#### NEVADA COMMISSION ON ETHICS

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

By: /s/ Phillip K. O'Neill  
Phillip K. O'Neill  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **PANEL DETERMINATION** regarding **RFO No. 16-80C** via U.S. Certified Mail and electronic mail addressed to the Parties and the Requester, as an interested person, as follows:

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*Requester*

Dated: 8/30/17

  
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Employee, Nevada Commission on Ethics